

during school hours, on school property, or during an athletic activity), such as—

(i) guiding the student in resuming participation in athletic activity and academic activities with the help of a multi-disciplinary concussion management team, which may include—

(I) a health care professional, the parents of such student, a school nurse, relevant related services personnel, and other relevant school personnel; and

(II) an individual who is assigned by a public school to oversee and manage the recovery of such student; and

(ii) providing appropriate academic accommodations aimed at progressively reintroducing cognitive demands on the student; and

(C) encourages the use of best practices designed to ensure, with respect to concussions, the uniformity of safety standards, treatment, and management, such as—

(i) disseminating information on concussion safety and management to the public; and

(ii) applying uniform best practice standards for concussion safety and management to all students enrolled in public schools.

(2) **POSTING OF INFORMATION ON CONCUSSIONS.**—Each public elementary school and each public secondary school shall post on school grounds, in a manner that is visible to students and school personnel, and make publicly available on the school website, information on concussions that—

(A) is based on peer-reviewed scientific evidence (such as information made available by the Centers for Disease Control and Prevention);

(B) shall include information on—

(i) the risks posed by sustaining a concussion;

(ii) the actions a student should take in response to sustaining a concussion, including the notification of school personnel; and

(iii) the signs and symptoms of a concussion; and

(C) may include information on—

(i) the definition of a concussion;

(ii) the means available to the student to reduce the incidence or recurrence of a concussion; and

(iii) the effects of a concussion on academic learning and performance.

(3) **RESPONSE TO CONCUSSION.**—If an individual designated from among school personnel for purposes of this Act, one of whom must be in attendance at every school-sponsored activity, suspects that a student has sustained a concussion (regardless of whether or not the concussion occurred during school-sponsored activities, during school hours, on school property, or during an athletic activity)—

(A) the student shall be—

(i) immediately removed from participation in a school-sponsored athletic activity; and

(ii) prohibited from returning to participate in a school-sponsored athletic activity on the day that student is removed from such participation; and

(B) the designated individual shall report to the parent or guardian of such student—

(i) any information that the designated school employee is aware of regarding the date, time, and type of the injury suffered by such student (regardless of where, when, or how a concussion may have occurred); and

(ii) any actions taken to treat such student.

(4) **RETURN TO ATHLETICS.**—If a student has sustained a concussion (regardless of whether or not the concussion occurred during school-sponsored activities, during school hours, on school property, or during an athletic activity), before such student resumes participation in school-sponsored athletic

activities, the school shall receive a written release from a health care professional, that—

(A) states that the student is capable of resuming participation in such activities; and

(B) may require the student to follow a plan designed to aid the student in recovering and resuming participation in such activities in a manner that—

(i) is coordinated, as appropriate, with periods of cognitive and physical rest while symptoms of a concussion persist; and

(ii) reintroduces cognitive and physical demands on such student on a progressive basis only as such increases in exertion do not cause the reemergence or worsening of symptoms of a concussion.

(b) **NONCOMPLIANCE.**—

(1) **FIRST YEAR.**—If a State described in subsection (a) fails to comply with subsection (a) by the compliance deadline, the Secretary of Education shall reduce by 5 percent the amount of funds the State receives under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) for the first fiscal year following the compliance deadline.

(2) **SUCCEEDING YEARS.**—If the State fails to so comply by the last day of any fiscal year following the compliance deadline, the Secretary of Education shall reduce by 10 percent the amount of funds the State receives under that Act for the following fiscal year.

(3) **NOTIFICATION OF NONCOMPLIANCE.**—Prior to reducing any funds that a State receives under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in accordance with this subsection, the Secretary of Education shall provide a written notification of the intended reduction of funds to the State and to the appropriate committees of Congress.

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to affect civil or criminal liability under Federal or State law.

SEC. 4. DEFINITIONS.

In this Act:

(1) **CONCUSSION.**—The term “concussion” means a type of mild traumatic brain injury that—

(A) is caused by a blow, jolt, or motion to the head or body that causes the brain to move rapidly in the skull;

(B) disrupts normal brain functioning and alters the mental state of the individual, causing the individual to experience—

(i) any period of observed or self-reported—

(I) transient confusion, disorientation, or impaired consciousness;

(II) dysfunction of memory around the time of injury; or

(III) loss of consciousness lasting less than 30 minutes; or

(ii) any 1 of 4 types of symptoms, including—

(I) physical symptoms, such as headache, fatigue, or dizziness;

(II) cognitive symptoms, such as memory disturbance or slowed thinking;

(III) emotional symptoms, such as irritability or sadness; or

(IV) difficulty sleeping; and

(C) can occur—

(i) with or without the loss of consciousness; and

(ii) during participation in any organized sport or recreational activity.

(2) **HEALTH CARE PROFESSIONAL.**—The term “health care professional”—

(A) means an individual who has been trained in diagnosis and management of concussion in a pediatric population; and

(B) is registered, licensed, certified, or otherwise statutorily recognized by the State to provide such diagnosis and management.

(3) **LOCAL EDUCATIONAL AGENCY; STATE.**—The terms “local educational agency” and

“State” have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(4) **RELATED SERVICES PERSONNEL.**—The term “related services personnel” means individuals who provide related services, as defined under section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401).

(5) **SCHOOL-SPONSORED ATHLETIC ACTIVITY.**—The term “school-sponsored athletic activity” means—

(A) any physical education class or program of a school;

(B) any athletic activity authorized during the school day on school grounds that is not an instructional activity;

(C) any extra-curricular sports team, club, or league organized by a school on or off school grounds; and

(D) any recess activity.

By Mr. MURPHY (for himself, Mr. YOUNG, Mr. KAINE, and Mr. CRAMER):

S. 220. A bill to prohibit certain non-compete agreements, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. MURPHY. Madam President, if you were working for the sandwich shop Jimmy John's—I don't know if the Presiding Officer has ever had a Jimmy John's sandwich. It is a pretty good sandwich. If you were working for Jimmy John's sandwich shop in the middle of the last decade, around 2014, 2015, 2016, you might have been required to sign a contract with Jimmy John's to make sandwiches. Buried in that contract, as a fast food worker at Jimmy John's in 2014, 2015, 2016, was something called a noncompete clause.

A lot of Americans have heard of noncompete clauses. They think of them as applying to executives, individuals who make a lot of money, who possess really intricate, detailed information about a product. But Jimmy John's made everybody who came to work in many of their sandwich shops sign a noncompete agreement. The noncompete agreement for Jimmy John's sandwich makers said that if you ever left Jimmy John's, you would not be able to work at any business within 2 to 3 miles of any Jimmy John's for any company that made over 10 percent of its revenue from selling “submarine, hero-type, deli-style, pita, and/or wrapped or rolled sandwiches” for 2 years. Low-income, minimum-wage workers at Jimmy John's, if they tried to leave that job, were prohibited from going to work for Subway or going to work for D'Angelo's or maybe even, according to this definition, McDonald's or Burger King.

Of course, that sounds patently ridiculous. Why would you need to protect the intellectual secrets of sandwich making at Jimmy John's by applying noncompete agreements for these low-income workers? But this wasn't and isn't an anomaly. In fact, one out of six hospitality restaurant workers, by some studies, has a noncompete agreement. Today, noncompete agreements apply to one in five American workers. That is 30 million workers.

Amazon warehouse workers were required for a long time to sign noncompete agreements. I read a story the other day of a company called Camp Bow Wow that pays people to pet-sit. They required their pet sitters to sign noncompete agreements.

The reason that noncompete agreements are being used at industrial-level scale today is not to protect the trade secrets of sandwich making or pet sitting; it is to keep wages down. It is to prevent low-income workers from being able to go out and get a better job and thus pressure their existing employer to increase wages. This practice has become pervasive throughout our economy, and it is just a fundamental restraint on free trade.

Now, many of these noncompete agreements end up being nonenforceable. A lot of State laws don't allow you to have a noncompete agreement for a low-wage worker. But in practice, it doesn't really matter because when that individual tries to leave and they get told they can't because of a noncompete agreement, they don't know that it is nonenforceable in State law or if they do know, they don't have the resources to contest the cause in a court of law. So what do they do? They just end up staying.

The FTC filed a complaint in January of this year against two Michigan-based companies that required their security guards to sign noncompete agreements prohibiting them from working for a competing business within a 100-mile radius. Despite the fact that these security guards were making very low wages, the company's noncompete included a restriction that required the employee to pay a \$100,000 penalty for any alleged violation of the clause. The intention here is simply to bind the employee to the company, to give them no ability to bargain for a higher wage because they might be able to get a better wage somewhere else. There is no proprietary information that those security guards possess.

What is equally interesting is that there is increasingly great data to show that there is actually no reason to have noncompete agreements even for higher income workers. The imposition of noncompete agreements on low-wage workers is primarily about just trying to restrain wages, but the imposition of noncompete agreements on higher income workers is about impeding innovation. It is about a company that doesn't want competitors, so they bind their executives to noncompete agreements such that their executives can't go work for a competing company or can't go out and start a company that may compete.

What is so maddening is that there are plenty of protections in our existing law that protect companies from intellectual property theft or patent theft. If what you worry about is your trade secrets being appropriated by a competitor, well, the law already protects you from that. You don't have to deny your employees or your execu-

tives the ability to go work for another company.

California rightly has the reputation as probably the world's center of innovation, right? More startups, more world-changing companies have come out of California than any other State and probably than any other part of the world. California was the first or one of the first in this country to ban noncompete agreements. California decided it didn't need noncompete agreements to protect intellectual property in a State that probably has a greater interest in protecting intellectual property than any other State. In fact, California's economic engine is dependent on their prohibition of noncompete agreements because by prohibiting noncompete agreements, California has a culture in which startups are encouraged, in which executives can leave one company and start another.

Eric Yuan was an executive at Cisco Webex. If he wasn't working in California, he might have had a noncompete agreement applied to him, but he didn't, and so he could leave and start a company that was arguably competing with Cisco Webex—a company called Zoom.

To many economists on the right and the left, this is becoming a no-brainer. Noncompete agreements are bad for wage growth. Noncompete agreements are bad for innovation. Noncompete agreements are bad for low-income workers. Noncompete agreements are bad for high-income workers.

So today I am on the floor to talk about what the data tells us about noncompete agreements as a means to encourage my colleagues to take a look at a piece of legislation that we are introducing today, the Workforce Mobility Act, a pretty simple piece of legislation that would ban the use of noncompete agreements for both high-income and low-income workers.

It is a bipartisan piece of legislation. Senator TODD YOUNG, Senator KEVIN CRAMER, Senator TIM KAINE, and I are introducing this bill today. I don't know that there is another policy that the four of us can find common ground on, but we find common ground on this issue because maybe if you are a progressive, you come to this issue through the rights of workers and boosting their wages. If you are a conservative, you come to this issue through the restraint on free trade that exists through the perpetuation of noncompete agreements. But all across America, this is a pretty bipartisan issue, and here in the Senate, it is bipartisan as well.

I am glad that the FTC, just a week or so ago, announced that they were going to undertake a rule to ban noncompete agreements. I congratulate the Biden administration and the FTC for taking a leadership role. It may be that that rule, once it is adopted and in place, will do the work of this legislation, but we know that rules are only as good as the commitment of one particular administration.

So my hope and my recommendation is that no matter what the FTC does when it comes to restrictions on noncompete agreements, that we pass the Workforce Mobility Act so that we provide a guarantee in the law that noncompete agreements are not going to stand in the way of wages rising or small businesses starting.

There is a lot of public support out there as 92 percent of voters think that it is way too hard today to start or grow a new business and as 80 percent of voters—again, across party lines—support policies that allow people who want to start a new business more freedom by reducing the restrictions that come when you try to venture out on your own. Increasingly, one of the primary restrictions that exists for people who want to start a new business, who want to become entrepreneurs, are these noncompete agreements.

So I am coming to the floor today to recommend this bipartisan piece of legislation to my colleagues, to point to the States that have already adopted these restrictions, and to show how not only does the sky not fall when you get rid of noncompete agreements but that startups flourish and that wages increase.

Finally, I come to recommend to my colleagues that, in an environment where it is going to be a little harder to find agreement between Republicans and Democrats, this is a place where we can find that common ground. In one piece of policy, we can stick up for low-income workers and the free market. This is something that we can do together to help raise wages and to help power our economy.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 21—SUPPORTING THE OBSERVATION OF NATIONAL TRAFFICKING AND MODERN SLAVERY PREVENTION MONTH DURING THE PERIOD BEGINNING ON JANUARY 1, 2023, AND ENDING ON FEBRUARY 1, 2023, TO RAISE AWARENESS OF, AND OPPOSITION TO, HUMAN TRAFFICKING AND MODERN SLAVERY

Mrs. FEINSTEIN (for herself, Mr. GRASSLEY, Ms. CORTEZ MASTO, Ms. MURKOWSKI, Mr. BLUMENTHAL, Mrs. CAPITO, Mr. BROWN, Ms. COLLINS, Mr. DURBIN, Ms. KLOBUCHAR, Mr. MARKEY, Mr. WYDEN, and Mr. PADILLA) submitted the following resolution; which was considered and agreed to:

S. RES. 21

Whereas the United States abolished the transatlantic slave trade in 1808 and abolished chattel slavery and prohibited involuntary servitude in 1865;

Whereas, because the people of the United States remain committed to protecting individual freedom, there is a national imperative to eliminate human trafficking and modern slavery, which is commonly considered to mean—